IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1999 OF 2007

A.Ganpat Hariviran & Ors. ....Petitioners
V/s.
State of Maharashtra & Ors. ....Respondents

Mr.P.M. Vyas with H.P. Vyas for the Petitioners.

Mr.A.P. Kakade, AGP for Respondent No.1.

Mr.A.J. Bhor for Respondent Nos.2 to 4.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 28TH MARCH, 2007.

ORAL ORDER : (PER R.M. SAVANT, J.)

1. Rule. Rule with the consent of the parties returnable forthwith and heard.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioners have impugned the order dated 21.2.2007 passed by the Deputy Municipal Commissioner, Zone-IV in the Appeal filed by the Petitioners under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "the said Act"). By the said order, the Appeal filed by the Petitioners came to be dismissed.

3. Such of the facts which are necessary to be cited are stated thus :

. The Petitioners claimed to be labourers residing at Indira Nagar Zopadpatti, Mulund Link Road, Goregaon (East), Mumbai since last 18 years. According to the Petitioners, they are in possession of ration cards, photo identity cards and the cards issued by the Election Commission. It is the case of the Petitioners that out of 41 persons, who are residing on the said plot of land all except 11 persons have been provided for with alternate accommodation by Respondent No.2 - Municipal Corporation of Greater Mumbai.

4. In view of the fact that some officers from the Building and Factory Department of Respondent No.2 visited the plot of land occupied by the Petitioners on 30.6.2004 and threatened the Petitioners with eviction. The Petitioners had filed Writ Petition No.8787 of 2004 on the apprehension that the Petitioners would be dispossessed without hearing them and without giving them alternate accommodation. It appears that the said Writ Petition No.8787 of 2004 came to be disposed of by this Court by an order dated

23.12.2004 by which order the Competent Authority of Respondent No.2 was directed to give hearing to the Petitioners in the said Petition who are also the Petitioners in the present Petition. Pursuant to the said directions in the said Writ Petition, the Assistant Commissioner (P) South Ward heard the Petitioners and their advocate Mr.S.P. Singh and also considered the documents produced by the Petitioners in respect of their eligibility for alternate accommodation. On such consideration of the documentary evidence produced by the Petitioners, the Assistant Commissioner of Respondent No.2 came to a conclusion that the Petitioners are not eligible and do not qualify for alternate accommodation as per the policy of the State Government.

5. Being aggrieved by the said order dated 26.7.2005, the Petitioners filed an Appeal invoking the provisions of Section 35 of the said Act before the Deputy Municipal Commissioner who is an Appellate Authority. It is the case of the Petitioners that the Petitioners submitted documents in support of their case before the said Appellate Authority as having received them. It is further the case of the Petitioners that the office of the Appellate Authority informed the Petitioners that the date of the hearing

of the Appeal would be communicated to the Petitioners. However, till 17.3.2007, according to the Petitioners, they were not informed about the date of the hearing of the said Appeal and in fact on 17.3.2007 an order dated 21.2.2007 came to be pasted on the doors of the Petitioners' structures. It is the said order which is impugned in the present Petition.

6. The learned counsel for the Petitioners submits that the said order has been passed by the Appellate Authority without affording an opportunity of being heard to the Petitioners. It is submitted on behalf of the Petitioners by the learned counsel appearing for them that the Petitioners were awaiting the communication as regards the date of the hearing of the said Appeal but the Petitioners were dished out with a fait-accompli by pasting of the order, which was purportedly passed by the Appellate Authority on 21.2.2007. It is therefore, submitted by the learned counsel for the Petitioner that the said order deserves to be set aside on the ground of violation of the principles of natural justice.

7. On the other hand, it is contended on behalf of Respondent No.2 that the documents produced by the

Petitioners do not substantiate their case that they were on the site prior to 1.1.1995. It is further contended by Respondent No.2 that except for a few of documents, rest of the documents on which the Petitioners relied on, are post 1.1.1995. There is also a discrepancy in the address mentioned in the documents and the site presently occupied by the Petitioners.

8. Be that as it may, in view of the fact that the Petitioners were not heard by the Appellate Authority, which position has not been seriously controverted by the learned counsel for Respondent Nos.2 to 4 and which can also be discerned from an ex-facie reading of the said order, in as much as the said order does not refer to any submissions made on behalf of the Petitioners, in our view, it would be just and proper to set aside the said order dated 21.2.2007 and relegate the matter back to the Appellate Authority for a decision afresh in respect of the Appeal filed by the Petitioners. The Petitioners to appear before the Appellate Authority on 9.4.2007 and the Appellate Authority after giving an opportunity to the Petitioners, to decide the said matter within four weeks thereafter.

9. Rule is accordingly made absolute to the aforesaid extent with the parties to bear their own costs.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)